

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> , Debtors ¹	PROMESA Title III No. 17 BK 3283-LTS (Jointly Administered)
IN RE: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of PUERTO RICO ELECTRIC POWER AUTHORITY, Debtor	PROMESA Title III No. 17 BK 4780 LTS This Motion relates to PREPA and shall be filed in Lead Case No. 17 BK 3283-LTS and Case No. 17 BK 4780- LTS Re: ECF No. 2055

**MOTION FOR RECONSIDERATION OF ORDER AND
INFORMATIVE MOTION ABOUT MOTION FOR RECONSIDERATION
FILED BEFORE THE PUERTO RICO ENERGY BUREAU AND
RECONSIDERTAION LETTER BEFORE FOMB**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801 (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To the Honorable United States District Court Judge Laura Taylor Swain:

COMES NOW, EIF PR RESOURCE RECOVERY, LLC (“EIFPR”), through its undersigned counsel, and very respectfully informs as follows:

1. On September 17, 2020, this Honorable Court issued an Order (Docket entry #2198 in Case No. 17-4780) and a Memorandum Opinion (Docket entry #14335 in Case No. 17-03283).

2. EIFPR respectfully requests reconsideration of the Order based on the facts and merits of it’s the waste-to-energy project proposed for Puerto Rico in the municipality of Arecibo (“WTE Project”) and the contractual obligations contained in the Power Purchase and Operating Agreement (PPOA) for this project. In sum, this is a project that addresses the solid-waste-crisis that currently exists in Puerto Rico with the lack of legally compliant solid waste alternatives and the need for base-load-type of energy source for PREPA.

3. As part of its efforts to protect its proprietary rights as lender of the WTE Project and with the intent of making it feasible the development of such an important project for Puerto Rico, EIFPR has filed related reconsideration requests before the Puerto Rico Energy Bureau (:PREB”) and the Financial Oversight and Management Board for Puerto Rico (“FOMB”).

4. EIFP respectfully requests from this Honorable Court to be informed of its filings with the PREB and the FOMB, as described hereinafter, and respectfully requests that it take into consideration the arguments presented therein as part of this motion for reconsideration, all of which are incorporated by reference for all legal purposes.

5. On August 24, 2020, the PREB issued the Final Resolution and Order on the Puerto Rico Electric Power Authority's ("PREPA's") Integrated Resource Plan ("IRP Resolution").

6. On September 11, 2020, EIFPR and its collateral agent, V-Financial, LLC ("VF") filed a Motion for Reconsideration pursuant to the PREB's Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings and the Uniform Administrative Procedures Act of the Government of Puerto Rico. See copy of the Motion for Reconsideration included in **Exhibit A**.

7. In summary, EIFPR notified the PREB that it is the lender of the WTE Project, which was developed with its PPOA with PREPA, and that it has an interest in the WTE Project assets, including the PPOA. Copy of the PPOA and its amendments are included in **Exhibits B and C**, respectively

8. As a matter of fact, Article 20.2(f) the PPOA provides the right of the project lender to enter into a modification of the PPOA through a good faith negotiation with PREPA. If PREPA elects at a future date not to execute the PPOA with the lender, this would create a new liability for PREPA of the currently outstanding loan amount (\$74,347,000 for principal and interest) plus potential recovery for any past wrongful actions for breach of contract. This is not the preferred recourse.

9. The WTE Project is based on state-of-the-art facilities that incorporate and utilize the Best Available Control Technology ("BACT") as defined by the U.S. Environmental Protection Agency ("EPA") for the recovery of energy from non-hazardous solid wastes, thereby reducing the dependency on fossil fuel, in addition to reducing the emissions of atmospheric contaminants, including Criteria Air Pollutants, Hazardous Air Pollutants ("HAPs") and Green House Gases ("GHGs") that are currently being emitted to

the atmosphere from the use of fossil-derived fuels in other facilities to generate electricity.²

10. The WTE Project is consistent with Puerto Rico's renewable and diversification energy objectives, environmental protection goals, **base load energy needs**, among other public policy declarations.

11. In addition to the energy-related benefits, the WTE Project provides a sustainable alternative to the **solid-wastes-disposal-crisis** in Puerto Rico.³

12. As part of the hardships suffered after hurricanes Irma and María struck Puerto Rico in 2017, it is evident that Puerto Rico needs to reduce its dependency on fossil fuels and faced enormous amounts of waste generation that accentuated the waste disposal crisis.

13. The WTE Project introduces a Materials Separation Plan (MSP) consistent with the public policy goal of 35% reduction and recycling, plus an 80% volume reduction of the waste that must be landfilled.

14. The proposed Refuse Derived Fuel WTE technology⁴ would be among the technologies capable of producing base-load power for PREPA at a competitive price; lower than PREPA's existing power generation costs.

² Represents a major annual GHG reduction of over 1.1 million tons per year of CO₂ equivalent emissions.

³ In 1992, the U.S. Environmental Protection Agency (EPA) promulgated the performance standards for solid waste landfills and provided a 1-year phase out of non-complying landfills. Almost 3 decades have passed and of the 27 existing landfills in Puerto Rico, 22 are non-compliant, i.e. "open dumps" that contaminate the Island's waters, soils and air. The open dumps have not been discontinued due to the lack of complying alternatives, such as the WTE Project.

⁴ "Refuse Derived Fuel systems use mechanical methods to shred incoming solid wastes, separate out non-combustible materials, and produce a combustible mixture that is suitable

15. Pursuant to PREB's Regulation on Integrated Resource Plan for the Puerto Rico Electric Power Authority, Section 2.02(H)(2)(d)(ii), the selection criteria for the Preferred Resource Plan includes environmental impacts and specifies that if associated with quantifiable costs, these shall be included in the calculation of the present value of revenue calculation. In addition, PREPA must also consider other criteria including, but not limited to, system reliability; short and long-term risk; transmission needs and implications; distribution needs and implications; financial impacts on PREPA; and the public interest as set forth in the Energy Act. Where meeting the needs is associated with quantifiable costs, these costs are to be included in the calculation of the present value of revenue requirements.

16. The omission of the WTE Project and the associated PPOA from the IRP is clearly not in the public interest and does not properly reflect the applicable evaluation criteria.

17. Finally, the WTE Project also was submitted for designation as a critical project by the FOMB due to its energy and environmental benefits.⁵

18. As indicated in EIFPR's Informative Motion (Docket #2076 Case No. 17-04780-LTS and Docket #13683 Case No. 17-03283-LTS), it requested the FOMB not to proceed with the rejection of the WTE Project's PPOA through a letter to its Executive Director & Interim Revitalization Coordinator, Ms. Natalie Jaresko, for reasons in the public interest, including, among other things, the urgent need for a proven technology that

as a fuel in a dedicated furnace or as a supplemental fuel in a conventional boiler system.” See <https://www.epa.gov/smm/energy-recovery-combustion-municipal-solid-waste-msw>

⁵ See the Critical Project Application to FOMB, which was submitted in 2017 prior to Hurricane María, and includes a summary of the benefits of the WTE Project.

meets all requirements and performance standards protective of human health and the environment as an alternative method for properly compliant disposal of solid wastes. EIFPR has recently reiterated its request to Ms. Jaresko.

19. Through letter dated September 14, 2020 Ms. Jaresko, on behalf of the FOMB, responded to EIFPR's request and agreed with PREPA's decision to terminate the PPOA. See copy of this letter in **Exhibit D**.

20. On September 17, 2010, EIFPR submitted a reconsideration letter to the FOMB and PREPA based on the importance of the WTE Project for Puerto Rico, the potential claim and requested a opportunity to reach an agreement on the WTE Project and its PPOA. See copy in **Exhibit E**.

WHEREFORE, EIFPR respectfully requests reconsideration of the Order (Docket entry #2198 in Case No. 17-4780) so that the rejection of the PPOA not be approved pending the results from the proceedings before the PREB and the additional efforts being undertaken by EIFPR with the FOMB and PREPA regarding this project.

RESPECFULLY SUBMITTED.

CERTIFICATE OF SERVICE

I hereby state and certify that on 18th day of September of 2020, I have filed the foregoing document using the CM/ECF system, and that such document will be served electronically on all parties of record.

s/Rafael A. Toro-Ramírez
USDC-PR No. 205204
rtoro@toro-arsuaga.com
TORO & ARSUAGA, LLC
Attorneys for EIFPR
PO Box 11064
San Juan, P.R. 00922-1064
Tel. (787) 299-1100 Fax (787) 793 -8593